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United States

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Circuit Court of Appeals

For the Ninth Circuit.

G. W. BRAINARD, as Trustee of the Estate of PACIFIC
CO-OPERATIVE LEAGUE STORES, a Corpora-
tion, Bankrupt,

Petitioner,

vs.

FLOYD J. IRWIN, J. H. GOSNEY, FRED O. LLOYD,
FRANK W. LESNET, BERTHA A. BURGESS,
EDWARD BURGESS, W. A. GARA, T. Mc-
KIERNON, CLARENCE S. KING and J. H.
PHILLIPS,

Respondents.

Petition for Revision

Under Section 24b of the Bankruptcy Act of Congress,
Approved July 1, 1898, to Revise, in Matter of
Law, of an Order of the United States
Southern Division of the District
Court for the Northern Dis-
trict of California,
Third Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the United States Circuit Court of Appeals, for
the Ninth Circuit.

No. —.

G. W. BRAINARD, as Trustee of the Estate
of PACIFIC CO-OPERATIVE LEAGUE
STORES, a Corporation, Bankrupt,
Petitioner,

vs.

FLOYD J. IRWIN, J. H. GOSNEY, FRED O.
LLOYD, FRANK W. LESNET, BERTHA
A. BURGESS, EDWARD BURGESS, W. A.
GARA, T. McKIERNON, CLARENCE S.
KING and J. H. PHILLIPS,
Respondents.

Petition for Revision.

To the Honorable Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

The petition of G. W. Brainard, as trustee of the estate of Pacific Co-operative League Stores, a corporation, bankrupt, respectfully shows unto this Court:

I.

That on the 27th day of February, 1922, an involuntary petition in bankruptcy was filed against Pacific Co-operative League Stores, a corporation, bankrupt, in the District Court of the United States, in and for the Northern District of California, Southern Division, and thereafter and on the 15th day of March, 1922, the said District

Court made an order adjudicating the said corporation a bankrupt upon the said petition and referring further proceedings in the matter of the administration of the estate of the said bankrupt to A. B. Kreft, Esq., referee in bankruptcy of the said District Court.

That thereafter and on the 3d day of April, 1922, the said G. W. Brainard was appointed trustee of said bankrupt by its creditors at their first meeting, which said appointment was thereupon and upon said 3d day of April, 1922, approved by said referee.

That thereafter and within the time required by law said G. W. Brainard qualified as such trustee and ever since said time the said G. W. Brainard has been and now is the duly appointed, qualified and acting trustee of the estate of said bankrupt.

II.

That subsequent to the time of the filing of the aforesaid petition for an adjudication of said Company a bankrupt and within the time required by law, certain claimants filed in the said bankruptcy matter with the said referee their claims against the estate of said bankrupt for the respective amounts set opposite their names, to wit:

Floyd J. Irwin	\$ 72.00
J. H. Gosney	672.44
Fred O. Lloyd	100.00
Frank W. Lesnet	838.91
Bertha A. Burgess	75.00
Edward Burgess	75.00

W. A. Gara	162.50
T. McKiernon	16.25
Clarence S. King	700.00
J. H. Phillips	100.00

asserting the right to have the said claims allowed as priority in the sums filed up to the extent of \$300 under the provisions of Section 64-b (4) of the Bankruptcy Act.

That thereafter, upon the written stipulation filed herein, copy of which is hereto attached, marked "A" and hereby referred to and made a part hereof, and certain oral testimony offered before the referee, the matter was submitted and on the 27th day of October, 1922, the said referee made an order allowing as priority under said section of the Bankruptcy Act the said claims for the amounts filed, not to exceed the sum of \$300, copy of which is hereto attached, marked Exhibit "B" and hereby referred to and made a part hereof, which said order was filed on November 15, 1922.

III.

That thereafter and on the 16th day of November, 1922, the said trustee in bankruptcy filed with said referee his petition for review by the District Court of the said order of the said referee and thereafter and on the 17th day of January, 1923, the said referee filed in the said District Court his certificate on such review, a true copy of which said certificate, duly certified by the Clerk of said District Court, is hereto attached, marked Exhibit

“C” and hereby referred to and made a part hereof.

IV.

That thereafter and on the 26th day of March, 1923, the said District Court made an order in said matter affirming the said order of the said referee, a true copy of which said order, duly certified by the Clerk of said District Court, is hereto attached, marked Exhibit “D” and hereby referred to and made a part hereof.

Your petitioner charges the fact to be that said District Court erred as a mater of law in affirming the said order of the said referee for the following reasons, to wit:

(a) The said claimants and each and all of them were not workmen, clerks, traveling salesmen or servants of the bankrupt at the time the services mentioned in their respective claims were performed within the meaning of said Section 64-b (4) of the Bankruptcy Act, and the said claims should have been allowed as ordinary claims only and not entitled to priority under the said section of the Bankruptcy Act.

WHEREFORE, your petitioner, as such trustee in bankruptcy, feeling aggrieved because of said order of said District Court, asks that the same may be revised in matter of law by this Honorable Court as provided by Section 24-b of the Bankruptcy Act and the rules of practice in such cases provided, and that said order may be reversed, and for such other and further relief as may be just and proper.

Dated, April 4th, 1923.

JOS. KIRK,

CLARENCE A. SHURY,

Attorneys for G. W. Brainard, as Trustee of the
Estate of Pacific Co-operative League Stores,
a Corporation Bankrupt.

State of California,

City and County of San Francisco,—ss.

I, G. W. Brainard, trustee of the estate of Pacific Co-operative League Stores, a corporation, bankrupt, petitioner mentioned and described in the foregoing petition, do hereby make solemn oath that the statements therein contained are true to the best of my knowledge, information and belief.

G. W. BRAINARD.

Subscribed and sworn to before me this 4th day of April, 1923.

[Seal]

W. H. STEPHENS,

Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: No. 4003. In the United States Circuit Court of Appeals for the Ninth Circuit. G. W. Brainard, as Trustee of the Estate of Pacific Co-operative League Stores, a Corporation, Bankrupt, Petitioner, vs. Floyd J. Irwin et al., Respondents. Petition for Revision. Filed Apr. 4, 1923. F. D. Monckton, Clerk.

